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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, ~~1929~~ 1930

No. ~~581~~ 32

ANNA URAVIC, AS ADMINISTRATRIX OF THE GOODS, CHATTELS, AND CREDITS WHICH WERE OF ANTON URAVIC, DECEASED, PETITIONER,

vs.

F. JARKA COMPANY, INC., AND UNITED AMERICAN LINE, INC.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK

PETITION FOR CERTIORARI FILED JANUARY 18, 1930

CERTIORARI GRANTED MARCH 3, 1930

(34,712)

(34,712)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 581

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INDEX

	Page
Record on appeal to court of appeals of New York	1
Statement under rule 234	1
Notice of appeal to appellate division	3
Summons	5
Complaint	6
Answer of defendant F. Jarka Co., Inc.	9
Answer of defendant United American Line, Inc.	15
Stipulation amending complaint	17
Judgment	18
Order dismissing complaint	19
Order substituting attorneys	20
Stipulation re substitution of attorneys	21
Minute entries of trial	22*a*
Case and exceptions	23
Appearances of counsel	23

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 20, 1930

Page

Colloquy between court and counsel 23
Testimony of Anna Uravic 25
Testimony of Romano Uradich 29
Motion to dismiss 67
Order dismissing complaint 70
Statement re case 70
Defendants' Exhibits "A" to "F"—Photographs 71
Defendants' Exhibit "G"—Statement of Romano Yuretich .. 77
Affidavit of no opinion 80
Stipulation re settling case 81
Order settling case 81
Stipulation waiving certification 82
Order filing record in appellate division 82
Notice of appeal to court of appeals 83
Order of affirmance, appellate division 85
Judgment of affirmance 86
Order of appellate division denying motion for reargument 88
Order of appellate division granting leave to appeal to court of appeals 90
Affidavit of no opinion by appellate division 92
Stipulation waiving certification of record to court of appeals .. 93
Order 95
Judgment entered upon the order and judgment of affirmance by the court of appeals 97
Order and judgment of affirmance by the court of appeals 99
Certificate of county clerk 101
Order allowing certiorari 103

Court of Appeals

OF THE STATE OF NEW YORK. 1

ANNA URAVIC, as Administratrix of the Goods, Chattels and Credits which were of Anton Uravic, Deceased,

Plaintiff-Appellant,

—against—

F. JARKA COMPANY, INC., and UNITED AMERICAN LINE, INC.,

Defendants-Respondents.

2

Statement Under Rule 234.

This case comes up for review by this Court, pursuant to leave granted by the Appellate Division, Second Department, by order dated April 8, 1929. The order of affirmance was entered on or about February 15, 1929, and the judgment of affirmance was entered thereon on the 7th day of March, 1929.

The above entitled action was commenced by the service of a summons and complaint on both defendants on the 1st day of November, 1926. 3

The answer of the defendant, F. Jarka Co., Inc., was served on the 10th day of December, 1926.

On the 4th day of March, 1927, a stipulation was entered into between counsel for the plaintiff and counsel for the defendant, F. Jarka Co., Inc., wherein paragraph "Second" of the complaint was amended to read that "F. Jarka Co., Inc., was a foreign corporation instead of, as originally alleged, a domestic corporation".

Statement Under Rule 234.

4 The answer of the defendant United American Line, Inc., a general denial, was served on the 9th day of December, 1926.

The cause of action as to the defendant United American Line, Inc., was subsequently discontinued.

The plaintiff's attorney is Frederick R. Graves, Esq., who was substituted as attorney for the plaintiff, in place and stead of Stapleton & Friedman, Esqs., by an order of the Hon. Lewis L. Fawcett, Justice, dated May 5th, 1927.

The attorneys for defendant, F. Jarka Co., Inc.,
5 are Almy, Van Gordon & Evans, Esqs.

There has been no change of parties herein.

This action was tried before the Hon. Justice William B. Carswell and a jury on the 30th day of March, 1927, at which time the complaint was dismissed.

The plaintiff's notice of appeal was served on the 6th day of May, 1927.

6

Notice of Appeal.

SUPREME COURT,

KINGS COUNTY.

ANNA URAVIC, as Administratrix of the Goods, Chattels and Credits which were of Anton Uravic, Deceased,

Plaintiff,

—against—

F. JARKA COMPANY, INC., and UNITED AMERICAN LINE, INC.,

Defendants.

Sirs:

PLEASE TAKE NOTICE that the plaintiff Anna Uravic, as Administratrix of the goods, chattels and credits which were of Anton Uravic, deceased, hereby appeals to the Appellate Division of the Supreme Court for the 2nd Department at the next term thereof from the judgment of this Court entered herein and filed in the office of the Clerk of the County of Kings on the 7th day of April, 1927, whereby it is adjudged that the complaint of the plaintiff herein be dismissed upon the merits and that the defendant F. Jarka Company, Inc., recover from the plaintiff Anna Uravic, as Administratrix of the goods, chattels and credits which were of Anton Uravic, deceased, the sum of $144; and from the order entered herein and filed in the office of the Clerk of the County of Kings on the 7th day of April, 1927, dismissing the complaint herein and said

10 plaintiff Anna Uravic, as Administratrix of the goods, chattels and credits which were of Anton Uravic, deceased, appeals from each and every part of said judgment and order as well as from the whole thereof and this appeal is taken both upon question of law and upon question of fact.

Dated, New York, N. Y., May 6th, 1927.

Yours, etc.,

FREDERICK R. GRAVES,
Attorney for Plaintiff,
11 Office & P. O. Address,
29 Broadway,
Borough of Manhattan,
City of New York.

To:
WILLIAM E. KELLY, Clerk.

ALMY, VAN GORDON & EVANS,
Attorneys for Defendants,
140 Nassau Street,
New York City.

12

Summons.

SUPREME COURT,

KINGS COUNTY.

[SAME TITLE.]

To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated, New York, October 28, 1926.

STAPLETON & FRIEDMAN,
Attorneys for Plaintiff,
Office and Post Office Address,
305 Broadway,
Borough of Manhattan,
City of New York.

Complaint.

16

SUPREME COURT,

KINGS COUNTY.

[SAME TITLE.]

Plaintiff, by Stapleton & Friedman, her attorneys, complaining of the defendants, respectfully shows to this Court and alleges:

I. That heretofore and by an order and decree
17 duly made and entered in the Surrogate's Court of the County of Kings, Anna Uravic was duly appointed Administratrix of the goods, chattels and credits of Anton Uravic, the above named deceased, and that said Anna Uravic is duly qualified as such.

II. At all the times hereinafter mentioned, F. Jarka Company, Inc., was a domestic corporation, organized and existing under and by virtue of the Laws of the State of New York and having its principal office of business in New York City, State of New York.
18

III. At all the times hereinafter mentioned, F. Jarka Company, Inc., was engaged in the business of loading and unloading steamships and employed a number of men and used considerable material in the conduct of their business.

IV. At all the times hereinafter mentioned, the defendant, F. Jarka Company, Inc., had a con-

tract with the defendant United American Line, Inc., to do the work of unloading and loading the steamship "Hamburg" hereinafter referred to. 19

V. At all the times hereinafter mentioned, the defendant, United American Line, was a foreign corporation, organized and existing under and by virtue of the laws of the State of Delaware and having its principal office of business in the State of New York, in the Borough of Manhattan, City of New York.

VI. At all the times hereinafter mentioned, the United American Line, Inc., was engaged in the steamship business and owned and operated the steamship "Hamburg" hereinafter referred to. 20

VII. At all the times hereinafter mentioned, the Hudson River, at or near Pier 86, at the foot of West 46th Street, in the Borough of Manhattan, City of New York, was a navigable stream of water.

VIII. At all the times hereinafter mentioned, the steamship "Hamburg" was anchored in the Hudson River alongside of Pier 86. 21

IX. At all the times hereinafter mentioned, the deceased, Anton Uravic, was employed by the defendant, F. Jarka Company, Inc.

X. At all the times hereinafter mentioned, the deceased, Anton Uravic, was employed by the defendant, F. Jarka Company, Inc., on board the steamship "Hamburg" as a longshoreman.

22 XI. That on or about July 13th, 1926, while the deceased, Anton Uravic, was lawfully upon the steamship "Hamburg" and working for the defendant, F. Jarka Company, Inc., he was struck and knocked down by a draft, receiving serious injuries, whereby he died shortly thereafter from the effects of said injuries.

XII. That the aforementioned accident happened without any negligence on the part of Anton Uravic contributing thereto and wholly through the negligence of the defendants, their agents, servants and employees, in not furnishing a safe
23 and proper place to work; in not furnishing sufficient and adequate appliances; in not furnishing sufficient and competent help and on account of performing the work in a careless and negligent fashion and on account of the negligent, defective and broken condition of the steamship, together with its parts as a result of said accident, the deceased received injuries which caused his death.

XIII. That Anton Uravic died as a result of the aforesaid occurrence and injuries on the 13th day of July, 1926, intestate, and that here-
24 tofore and prior to the commencement of this action, letters of administration upon his estate were issued to Anna Uravic, his widow and next of kin, by the Surrogate of the County of Kings, and the said Anna Uravic was duly qualified as the aforesaid administratrix of the goods, chattels and credits of the said Anton Uravic, deceased, which accrued to him and is still acting as such.

XIV. That at the time of the decease of Anton Uravic, he was of the age of forty-five years and

Anna Uravic, adminstratrix herein, was his wife and entitled to his services, companionship, comfort, aid and support, and that the said Anton Uravic left surviving his wife, Anna Uravic, his son, John Uravic, and his daughter, Anna Uravic. 25

XV. That by reason of the premises and facts aforementioned, plaintiff has sustained damages in the sum of Fifty thousand ($50,000) Dollars.

WHEREFORE, plaintiff demands judgment against the defendants in the sum of Fifty thousand ($50,000) Dollars, besides the costs and disbursements of this action. 26

STAPLETON & FRIEDMAN,
Attorneys for Plaintiff,
305 Broadway,
Manhattan, New York City.

Answer of Defendant F. Jarka Co., Inc.

SUPREME COURT,

KINGS COUNTY.

[SAME TITLE.] 27

The defendant F. Jarka Co., Inc., answering the complaint of the plaintiff herein, alleges upon information and belief:

First: It denies that it has any knowledge or information sufficient to form a belief as to the allegations contained in paragraphs I, V, IX, X and XIV of said complaint, except that on the 13th day of July, 1926, it had in its employ one

28 known to it as Tony Uravic, engaged as a longshoreman on the S. S. "Hamburg".

Second: It denies the allegations contained in paragraphs II, IV, VI, XI, XII, XIII and XV of said complaint.

FOR A SECOND DEFENSE THIS ANSWERING DEFENDANT ALLEGES UPON INFORMATION AND BELIEF:

Third: That in so far as this action is brought to recover damages under the theory of the Common Law or in Admiralty, this answering defendant alleges that any injuries that may have been
29 sustained by the plaintiff's intestate resulting in his death, were sustained through his own carelessness and negligence, or that of a fellow servant or fellow servants, or that of some person, firm or corporation over whom this answering defendant had no control, and not by any negligence on the part of this answering defendant.

FOR A THIRD DEFENSE THIS ANSWERING DEFENDANT ALLEGES UPON INFORMATION AND BELIEF:

Fourth: That all the risks and dangers connected with the situation at the time and place
30 mentioned in the complaint, were necessary, open, obvious and apparent, and were known to and assumed by the plaintiff's intestate.

FOR A FOURTH, SEPARATE, DISTINCT AND COMPLETE DEFENSE, THIS ANSWERING DEFENDANT ALLEGES UPON INFORMATION AND BELIEF:

Fifth: That prior to the 13th day of July, 1926, this answering defendant secured compensation for its employees and continued to secure

such compensation pursuant to the provisions of 31
Section 50 of the Workmen's Compensation Law of the State of New York and the acts amendatory thereof and supplemental thereto, and had posted in a conspicuous place in and about the place where it was engaged in its business, a notice in the form prescribed by the State Industrial Board of the State of New York. At no time before the happening of the accident and the injury alleged to have been received by the plaintiff's intestate, did the plaintiff's intestate serve any notice in writing on this answering defendant of his election not to be bound by the 32
provisions of the said law in accordance with the statute in such case made and provided, and thereby this answering defendant as employer of the plaintiff's intestate, assumed liability for the payment of awards of compensation under the Workmen's Compensation Law of the State of New York. That by virtue of Section 113 of the Workmen's Compensation Law of the State of New York, the plaintiff's intestate and this answering defendant, elected to be bound by the provisions of the said Workmen's Compensation Law as the exclusive right and remedy of the plaintiff's intestate and his next of kin for the 33
injury and resultant death alleged to have been sustained, and therefore this Court has no jurisdiction of the subject matter herein or of this action.

FOR A FIFTH SEPARATE, DISTINCT AND COMPLETE DEFENSE THIS ANSWERING DEFENDANT ALLEGES UPON INFORMATION AND BELIEF:

Sixth: That in so far as the plaintiff seeks to recover on the theory of the so-called Jones

34 Act, being the Act of June 5, 1920, Chapter 250, Section 20, this answering defendant alleges that the complaint fails to state facts sufficient to constitute a cause of action, in that there is no allegation in the complaint that the vessel upon which the plaintiff's intestate was engaged as alleged in the complaint herein, and upon which the plaintiff claims that her intestate was injured, was a vessel of American registry or flying the American flag.

FOR A SIXTH SEPARATE, DISTINCT AND COMPLETE
35 DEFENSE THIS ANSWERING DEFENDANT ALLEGES UPON INFORMATION AND BELIEF:

Seventh: That the steamship "Hamburg" in connection with which the plaintiff claims that the said Anton Uravic, deceased, was injured, was a German vessel, registered under and by authority of the German Government and flying the German flag.

FOR A SEVENTH SEPARATE, DISTINCT AND COMPLETE DEFENSE THIS ANSWERING DEFENDANT ALLEGES
36 UPON INFORMATION AND BELIEF:

Eighth: This answering defendant reiterates and realleges the allegations contained in paragraph seventh with the same force and effect as though herein fully set forth.

Ninth: That the steamship "Hamburg" at all times mentioned in the complaint herein, was and still is a German vessel, and the alleged injury to the plaintiff's intestate and the alleged negli-

gent acts of this answering defendant, its agents, 37
servants and employees, took place on board a German steamship. By reason of these facts, the law applicable to the case is the Law of Germany. By the terms of the provisions of the Federal Insurance Ordinance of Germany, which is also known as the Workmen's Insurance Acts, which were initiated through the famous Imperial message of November 17, 1881, which Acts were later on uniformly codified by the so-called Federal Insurance Ordinance of Germany of July 19, 1911, and the acts amendatory thereof and supplemental thereto, particularly by the Act of July 19, 1923, 38
becoming effective August 9, 1923, and by the Act of July 14, 1925, becoming effective January 1, 1926. The heirs at law and next of kin of the plaintiff's intestate Anton Uravic, deceased, has the right to compensation for the death of the said Anton Uravic, from an accident arising out of and in the course of his employment not due to his wilful act, provided a claim thereto is put forward as required by the provisions of the said Federal Insurance Ordinance of Germany referred to; and by reason of this right, the plaintiff is barred by the laws of Germany, from maintaining this action. 39

FURTHER ANSWERING THE COMPLAINT AND AS A FURTHER SEPARATE, DISTINCT AND COMPLETE DEFENSE, THIS ANSWERING DEFENDANT ALLEGES UPON INFORMATION AND BELIEF:

Tenth: This answering defendant reiterates and realleges the allegations contained in paragraphs VII, VIII and IX herein contained, with

40 the same force and effect as though fully set forth herein.

Eleventh: That at all the times mentioned in the complaint herein, the steamship "Hamburg" was and still is a German vessel. By reason of his employment on board a German vessel, the plaintiff's intestate subjected himself to the laws of Germany, and any claim which his heirs at law and next of kin may have or which they may advance because of injuries received in the course of his employment on board a German vessel is
41 governed by the laws of Germany. By the terms and provisions of the Federal Insurance Ordinance of Germany, also known as the Workmen's Insurance Acts, which were initiated through the famous Imperial message of November 17, 1881, which Acts were later on uniformly codified by the so-called Federal Insurance Ordinance of Germany of July 19, 1911, and the acts amendatory thereof and supplemental thereto, particularly by the Act of July 19, 1923, becoming effective August 9, 1923, and by the Act of July 14, 1925, becoming effective January 1, 1926, the heirs at law and next of kin of the plaintiff's intestate
42 have the right to compensation for the death due to an accident arising out of and in the course of the plaintiff's intestate's employment, not due to his wilful act, provided said claim thereto is put forward as required by the provisions of the Federal Insurance Ordinance of Germany; and by reason of this right, the plaintiff is barred by the Laws of Germany, from maintaining this action.

Twelfth: That all the matters set forth in the

complaint relating to the management of a German vessel and in accordance with the provisions of the said Federal Insurance Ordinance of Germany above referred to, and International Comity, settlement of this matter should be left to the German Consul at the Port of New York. This answering defendant therefore requests that this Court do not take jurisdiction of this action. 43

WHEREFORE, this answering defendant demands judgment that the complaint herein be dismissed with costs.

ALMY, VAN GORDON & EVANS,
Attorneys for Defendant,
F. Jarka Co., Inc.,
Office & P. O. Address,
140 Nassau Street,
New York City. 44

Answer of Defendant United American Line, Inc.

SUPREME COURT,

KINGS COUNTY. 45

[SAME TITLE.]

Defendant United American Line, Inc., by William B. Devoe, its attorney, for its answer to the complaint of the plaintiff herein, respectfully shows to the Court as follows:

First: This defendant has no knowledge or information sufficient to form a belief as to any

46 of the allegations contained in paragraphs I, VII, IX, X, XI, XIII, XIV and XV of the complaint.

Second: This defendant denies all of the allegations contained in paragraphs IV, VI and XII thereof.

FOR A SEPARATE AND COMPLETE DEFENSE:

Third: This defendant alleges, upon information and belief, that any injuries sustained by Anton Uravic at the time and place or on the occasion mentioned in the complaint were due
47 in whole or in part or were contributed to by the negligence and want of care of said Uravic and not by any negligence or want of care on the part of the defendant.

WHEREFORE, defendant demands judgment dismissing the complaint together with the costs and disbursements of this action.

WILLIAM B. DEVOE,
Attorney for Defendant,
United American Line, Inc.,
165 Broadway,
Manhattan,
New York City.

48

Stipulation Amending Complaint.

49

SUPREME COURT,

KINGS COUNTY.

[SAME TITLE.]

It is hereby stipulated and consented that paragraph "II" of the complaint in the above entitled action be amended so that the same shall read as follows:

At all the times hereinafter mentioned, F. Jarka 50
Company, Inc., was a foreign corporation, organized and existing under and by virtue of the Laws of the State of Delaware, and having its principal office of business in New York City, State of New York; and it is further stipulated that the defendant, F. Jarka Company, Inc., for the purpose of the trial, will concede that the defendant F. Jarka Company, Inc., at all the times mentioned in the complaint was and still is a foreign corporation so organized and existing under and by virtue of the Laws of the State of Delaware.

51

Dated, New York, March 4th, 1927.

STAPLETON & FRIEDMAN,
Attorneys for Plaintiff.

ALMY, VAN GORDON & EVANS,
Attorneys for Defendant.

Judgment.

52

SUPREME COURT,

KINGS COUNTY.

[SAME TITLE.]

The issues in this action having regularly come on for trial at Trial Term, Part 3, of this Court, held in the Kings County Court House, Borough of Brooklyn, City of New York, on the 29th and
53 30th days of March, 1927, before Hon. William B. Carswell, Justice and a jury, and the defendant, F. Jarka Co., Inc., having moved at the close of the plaintiff's case to dismiss the complaint, and the said motion having been granted by the Court upon the merits,

Now on motion of Almy, Van Gordon & Evans, attorneys for the defendant, F. Jarka Co., Inc., it is hereby

ADJUDGED AND DECREED that the complaint of the plaintiff herein be and the same is hereby dismissed upon the merits, and that the defendant,
54 F. Jarka Co., Inc., do recover from the plaintiff, Anna Uravic, as Administratrix of the goods, chattels and credits of Anton Uravic, deceased, the sum of One hundred forty-four ($144) Dollars costs and disbursements taxed herein, and that the said defendant have execution therefor.

Judgment signed and entered this 7th day of April, 1927.

WM. E. KELLY,
Clerk.

Order Dismissing Complaint.

55

At a Trial Term, Part 3 of the Supreme Court, County of Kings, held in the Kings County Court House, Borough of Brooklyn, City of New York, on the 7th day of April, 1927.

Present—Hon. William B. Carswell, *Justice.*

[SAME TITLE.]

The issues in this action having regularly come 56
on for trial at Trial Term, Part 3 of this Court, held in the Kings County Court House, Borough of Brooklyn, City of New York, on the 29th and 30th days of March, 1927, before Hon. William B. Carswell, Justice and a jury, and plaintiff and defendant, F. Jarka Co., Inc., being represented by counsel upon said trial, and the plaintiff having introduced all her proof upon said trial, and at the close of the plaintiff's case the defendant, F. Jarka Co., Inc., having moved to dismiss the complaint herein, upon the ground that the plaintiff has failed to make out a cause of action against
said defendant, and after hearing Thomas J. 57
Brennan, Esq., of counsel for defendant, F. Jarka Co., Inc., in support of said motion, and Thomas J. Stapleton, Esq., of counsel for plaintiff in opposition thereto.

Now, on motion of Almy, Van Gordon & Evans,

58 attorneys for the defendant, F. Jarka Co., Inc., it is hereby

ORDERED that the said motion be and the same is hereby granted, and the complaint of the plaintiff is hereby dismissed upon the merits.

Enter

WM. B. CARSWELL,
J. S. C.

Granted April 7, 1927.

59 WILLIAM E. KELLY,
Clerk.

Order Substituting Attorneys.

At a Special Term, Part II of the Supreme Court of Kings County at the Courthouse thereof in the Borough of Brooklyn, State of New York, on the 5th day of May, 1927.

60 Present—HON. LEWIS L. FAWCETT, *Judge*.

[SAME TITLE.]

Upon the annexed stipulation of the attorney for the plaintiff, the plaintiff in person and the substituted attorney for the plaintiff herein, dated

and acknowledged as to the plaintiff on the 3rd day of May, 1927, it is 61

ORDERED that Frederick R. Graves, Esq., be and he hereby is substituted for the plaintiff herein in place and stead of Stapleton & Friedman, Esqrs.

Enter,

L. L. FAWCETT,
J. S. C.

Consent. 62

SUPREME COURT,

KINGS COUNTY.

[SAME TITLE.]

IT IS HEREBY STIPULATED AND AGREED by and between Stapleton & Friedman, formerly the attorneys for the plaintiff herein, the present attorney for the plaintiff herein, Frederick R. Graves of 29 Broadway, New York City, and Anna Uravic, that Frederick R. Graves be and he hereby is substituted for the plaintiff herein in the place and stead of Stapleton & Friedman the present attorneys for the plaintiff. 63

It is further stipulated that the present attorneys for the plaintiff, Stapleton & Friedman, expressly waive any and all liens on the plaintiff's cause of action.

Consent.

64 It is further stipulated that an order may be entered herein substituting Frederick R. Graves as attorney for the plaintiff in place and stead of Stapleton & Friedman without further notice.

STAPLETON & FRIEDMAN,
Attorneys for Plaintiff.

ANNA URAVIC,
Plaintiff in Person.

FREDERICK R. GRAVES,
Substituted Attorney.

65

State of New York,
County of New York—ss.:

On the 3rd day of May, 1927, before me personally appeared ANNA URAVIC to me known and known to me to be the individual described therein and who executed the foregoing instrument and she duly acknowledged to me that she executed the same.

NATHAN JELLING,
66 Notary Public.

Extract from Clerk's Minutes. 64a

At a Trial Term of the Supreme Court of the State of New York held in and for Kings County, at the Court House in the Borough of Brooklyn, on the 29th and 30th days of March, 1927.

Present—Hon. William B. Carswell, *Justice*.

#27349

Stenographer Louis Zimmerman. 65a

Anna Uravic, as Admr., etc., of Anton Uravic, deceased,

Plaintiff,

—against—

F. Jarka Company, Inc., and United American Line., Inc.,

Defendants.

66a

This cause having been called for trial in its order on the Calendar, and twelve trial Jurors having been duly drawn, empanelled and sworn to try the same, the counsel for the plaintiff moves to discontinue as to the defendant United American Line, Inc. Motion granted.

Upon the evidence at the close of plaintiff's case

Extract from Clerk's Minutes.

64b counsel for defendant moves to dismiss the complaint. Motion granted.

Thirty days' stay of execution after service of notice of entry of judgment and sixty days in which to make and serve a case on appeal granted to the plaintiff.

April 7, 1927. By Carswell, *J.*—Order signed granting motion dismissing complaint on its merits.

A true extract from the minutes.

65b

WILLIAM E. KELLY,
Clerk.

66b

Case and Exceptions.

67

SUPREME COURT,

KINGS COUNTY.

TRIAL TERM—PART III.

[SAME TITLE.]

Brooklyn, N. Y., March 30, 1927.

Before—HON. WILLIAM B. CARSWELL, *Justice,* and a Jury.

68

APPEARANCES:

THOMAS J. STAPLETON, ESQ., for the Plaintiff.

THOMAS J. BRENNAN, ESQ., for the Defendant Jarka Company.

(A jury was duly empaneled and sworn.)

The Court: Who appears for the United American Line?

Mr. Stapleton: Only the stevedores are involved. This is the wrong defendant, the United American Line. 69

The Court: You discontinue as to them?

Mr. Stapleton: That was discontinued.

(Mr. Stapleton made an opening statement to the jury on behalf of the plaintiff.)

(Mr. Brennan made an opening statement to the jury on behalf of the defendant.)

70 The Court: Is this action under the Jones Act exclusively?

Mr. Stapleton: Under the Jones Act.

The Court: All right.

Mr. Brennan: Will counsel for the plaintiff concede that this ship was flying the German flag?

Mr. Stapleton: Yes.

Mr. Brennan: And will you also concede that the defendant Jarka Company was qualified as a self-insurer. I have the certificate here.

Mr. Stapleton: I do not see where that is material.

71 Mr. Brennan: Under the compensation law.

The Court: The compensation law does not apply here.

Mr. Brennan: It may become significant later on, sir. It may become important, I don't know.

The Court: Do you want to concede it? You may concede it even though it may not have any legal effect.

Mr. Stapleton: All right, I will concede that.

Now, under this stipulation, I move to amend paragraph two of the complaint to read: "At all the times hereinafter mentioned F. Jarka Company, Inc., was a foreign corporation organized
72 and existing under and by virtue of the laws of the State of Delaware and having its principal office of business in New York City, State of New York."

Mr. Brennan: No objection.

The Court: Motion is granted.

Mr. Stapleton: We might as well have also—well, it is conceded that is a fact, that it is a foreign corporation.

Mr. Brennan: Yes.

Mr. Stapleton: I understand Mr. Brennan also

will concede that the deceased, Anton Uravic, died in Saint Mark's Hospital on July 13, 1926, at about 11:55 A. M. as a result of the injuries received on that same day on board the steamship "Hamburg" in the accident involved in this case. 73

Mr. Brennan: That is conceded.

Mr. Stapleton: It is also conceded that Anton Uravic was a citizen of the United States having been so made on June 25, 1922.

ANNA URAVIC, 146 27th Street, Borough of Brooklyn, City of New York, the plaintiff, called as a witness on her own behalf, being first duly sworn, testified as follows: 74

Mr. Stapleton: It is also conceded that Anna Uravic was appointed administratrix of the goods, chattels and credits of Anton Uravic prior to the institution of this suit by due order made by Surrogate George Albert Wingate.

Direct examination by Mr. Stapleton:

Q. Where do you reside, Mrs. Uravic? Where do you live? A. 146 27th Street. 75

Q. You got to speak up so this gentleman can hear you. I could not hear you. A. 146 27th Street, Brooklyn.

Q. You got to do a little better than that, Mrs. Uravic. Where do you live? A. 146 27th Street, Brooklyn.

Q. Were you married to Anton Uravic? A. Yes.

76 Q. When were you married to him, how long ago? A. Twenty years.

Q. Twenty years ago? A. Yes.

Q. Where were you married? Where were you married? A. (No answer).

Q. In this country? A. No.

Mr. Brennan: We do not question that at all.

Q. How long have you been living in Brooklyn here? A. Thirteen years.

77 Q. And in the address that you have just given how long have you lived? A. Five years.

Q. Did you have any children? A. Two.

Q. What are their names? A. Anna.

Q. And what is the boy's name? A. John.

Q. How old is Anna? A. Twelve.

Q. What does Anna do? A. She went to school.

Q. She goes to school? A. Yes.

Q. What school does she go to? A. Public.

Q. What does John do? A. He worked in the factory.

Q. How old is John? A. Fifteen.

Q. On July 13, 1926, when your husband Anton
78 was killed, what did John do then, was he working then? A. No.

Q. Where was he going? A. That time vacation. Before he went to school.

Q. Well, did he work before your husband was killed? A. No.

Q. Well, what was he doing? Did he go to school? A. Yes.

Q. What school? A. High school.

Q. How many years had he gone to high school? A. Two.

Q. How old was your husband at the time he 79
was killed? A. Forty-five.

Q. What was the condition of his health before this accident? A. Very good.

Q. What kind of work did he do? A. Longshoreman.

Q. What other kind of work had he done previously? A. He work in the shipyard.

Q. Did he always have to do hard work? A. Yes.

Q. What kind of a house is it that you live in, private house? A. Yes.

Q. Do you own that house? A. Yes.

Q. When did you buy that house? A. 1921. 80

Q. Is that house in your name? A. Yes.

Q. Who gave you the money for that house?

Mr. Brennan: That is objected to as incompetent, irrelevant, and immaterial.

Mr. Stapleton: I will withdraw it then.

Q. Now, while your husband was working as a longshoreman what was his salary? A. Forty, forty-five, sometimes more.

Mr. Brennan: I do not hear her.

81

Q. Speak up a little louder. How much? A. Forty, forty-five, sometimes more.

Q. For how long before this accident was he a longshoreman? A. Nearly two years.

Q. Nearly two years? A. Nearly two years.

Q. Now, of that $45 did he give you any part of it or how much? A. All pay.

Q. He gave you all of it? A. Yes.

Q. And with that money that he gave you did you save any?

82 Mr. Brennan: That is objected to.
Mr. Stapleton: I withdraw it.

Q. What kind of a disposition did your husband have? A. I don't understand.

Q. What kind of a disposition did Mr. Uravic have? Was he a nice man or was he a brute? A. No, very nice.

Q. Did he stay home many nights? A. Every night.

Q. Did he associate with the children? A. (Witness nods her head.)

83 Q. What is the answer? A. I don't know what you say.

Q. Well, when he stayed home at nights before this accident what did he do? Tell us? A. He stayed with the family.

The Court: "He stayed with the family." Keep your voice up so that they can hear you.

Q. And did the children have lessons at night? A. Yes.

Q. And was he able to help them with the lessons? A. Sure.

84 Q. Did he talk to them? A. Yes.

Q. Did you go out to the theatre with him, to the moving pictures? A. Sometimes, yes.

Q. Did he go out with the children? A. Yes.

Q. Did you go to other places of entertainment? What is the answer? A. Yes.

Q. Did you have friends call at the house and entertain them? A. Many times.

Q. And did you visit with your husband and children? A. Sure.

Q. At other places? A. Yes. 85

Mr. Stapleton: I think that is all.
Mr. Brennan: No questions.

ROMANO URADICH, 422 Degraw Street, Borough of Brooklyn, City of New York, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination by Mr. Stapleton:

Q. Where do you live, Mr. Uradich? A. 422 86
Degraw Street, Brooklyn.

Q. Will you keep your voice up, Mr. Uradich, so these gentlemen can hear you? By whom are you employed at the present time? A. Present time? For the Brooklyn City Railroad, motorman.

Q. A motorman on the trolley line here in Brooklyn? A. Yes, sir.

Q. Now, on July 13, 1926, were you employed on the steamship "Hamburg"? A. Yes, sir.

Q. You were a member of a gang there, were you? A. Yes, sir. 87

Q. On hatch number two? A. Number two hatch, yes, sir.

Q. How many men were working in the gang? A. In my gang was working four men and the other gang four.

Q. Will you talk up? I could not hear that. A. Four men on deck.

Q. Four men on deck? A. In each gang.

Q. How long had you been working for the defendant Jarka? A. Going on four years.

88 Q. Four years? A. Yes, sir.

Q. As a longshoreman? A. Always as longshoreman, on deck.

Q. I wish you would talk up. I can't hear.

The Court: Stand up alongside there. Maybe your voice will come out better. Stand up alongside this rail.

Q. How many years have you been a longshoreman? A. Fourteen years.

Q. And have you worked around this port here? A. Always here, New York and Brooklyn.

89 Q. Always in New York and Brooklyn? A. Yes.

Q. For what companies have you worked? A. I used to work for the Porto Rico Line about five years; then I was foreman and stevedore on the Peninsular Line for a year and a half; then I was foreman for John T. Clark for eight months, and the rest of them I work always on deck as gangway man for eight years for Frank Jarka and other companies.

Q. And during the fourteen years are you familiar with the customs in loading and un-

90 loading all kinds of freight on the type of ship that the "Hamburg" is? A. Well, I handled any kind of freight.

Mr. Brennan: I do not hear you at all.

The Court: Yes or no. Are you familiar with the customs?

Q. Are you familiar with them? Do you know the customs of unloading and loading ships of that type? A. Yes, sir.

The Court: I do not think you should go into the customs until we get some facts. There may be customs that have no application and therefore we won't be concerned with them. 91

Q. When did you go to work on this ship "Hamburg"? A. Eight o'clock in the morning.

Q. Is that the first day you had worked on that ship? A. That is the first day we started to discharge. We make up the ship the day before.

Q. Were you there when Anton Uravic was hired also? A. Yes, sir. 92

Q. Were you all hired together? A. Yes, sir.

Q. Where was that? A. The day before, on the afternoon.

Q. Tuesday? A. At one o'clock, outside the dock.

Q. That is, outside Dock 86, North River? A. Yes, sir.

Q. Now, what was your position in the gang? A. I was the gangway man.

Q. What was Anton Uravic? A. He was a hooker-on, the fourth man——

The Court: Speak slower and keep your voice up. I am within five feet of you and I did not understand a word you said in these last two or three sentences you uttered. 93

Q. Anton Uravic was the fourth man in the gang? A. Yes, sir.

Q. What does that mean? A. He was hooker-on.

94 *By the Court:*

Q. He was what? A. Hooker-on. He was supposed to hook on the drafts.

The Court: Oh, hooker-on.

By Mr. Stapleton:

Q. Now, did you see this accident to Anton Uravic? A. Yes, sir.

Q. What kind of work was going on at the time? A. At the time the accident happened we were
95 hoisting up heavy lifts from number two hatch.

Q. Were you unloading freight from the ship?

Mr. Brennan: I do not hear. I don't know a word he said.

The Court: Stand up closer to this rail, please, and talk slower.

Mr. Brennan: May we have that answer read?

(The last answer was read by the stenographer.)

Q. You were unloading the ship at the time?
96 A. Yes, sir.

Q. Now, what time in the morning did this accident happen to Uravic? A. Around ten-thirty.

Q. And you had started to work about eight o'clock that morning? A. Yes, sir.

Q. Will you describe how the work was conducted before this accident? A. I don't get you.

Q. Just tell us in your own way how this work was being done. A. Well, we start——

Q. How many booms there were and how they

were placed, and so forth. A. There was two 97
booms working in the same hatch, one afterpart and one forward part of the ship. My gang was working in the afterpart, on the heavy lifts, and the other gang was taking out general cargo in the forward part of the ship; but we was taking general cargo from eight to ten; at ten o'clock we started heavy lifts.

Q. At ten o'clock? A. Yes, sir. Before we hoist up the first draft I tell the stevedore, "That boom is too high."

Q. Whom do you mean by the stevedore? A. That is Tom, Tom, I don't know the second name. 98

Q. Was he the man who gave orders? A. He was the man in charge of the ship.

Mr. Brennan: I move to strike that out.
The Court: Stricken out.

Q. Was he the man who gave orders to all the men there working for Jarka? A. Yes, sir. He says, "Never mind, start to work, never mind the boom."

By the Court:

99

Q. What did you say was the matter with the boom? What? A. The boom was too high, set too high.

Q. Set too high? A. Set too high.

By Mr. Stapleton:

Q. What do you mean by that? A. It was all cases; they were cases; because the cases was too long.

100 Q. Do you mean that the place where the boom is attached to the mast, that it was too high? A. Yes, sir, it was too high, sir.

Q. How many feet too high? A. It was about three feet too high.

Q. What was the effect of having the boom three feet too high? A. Because we have only small drafts before so we don't mind that. The boom was—the fall was seven feet from the coamings. So I told him can go about three feet, that makes it ten feet. Well, anyhow, I started to work the way he told me. I take out about seven or
101 eight cases, very slow. Every one was coming up and striking against the coamings of the ship, the side of the ship.

Q. Every one of those six or seven were hitting against the coaming of the ship? A. Yes, every one; and that one that struck Uravic was the eighth or ninth, I can't remember very good. That was extra heavy, was about three and a half ton. It was a big, heavy case.

Q. How long was it? A. It was about twenty feet long.

Q. How wide? A. I think it was three feet.

Q. Have you any idea how heavy it was? A. It
102 was three ton and a half.

Q. Now, how long is this hatchway? A. Twenty-five feet.

Q. And how wide is it? A. Around eighteen, I guess eighteen feet.

Q. Now, you tell us that as this boom was placed on this occasion it was three feet too high. What effect did that have in the bringing of the boom up from the hatchway?

Mr. Brennan: The boom?

Q. Bringing the draft up from the hatchway. 103

Mr. Brennan: I object to this unless the draft is specified.

Mr. Stapleton: I will withdraw that.

Q. Now, Uradich, where was Anton Uravic working at the time the draft here hit him? A. Anton Uravic was sent in the other side of the coaming of the hatch.

Q. Who sent him there? A. Tom.

Mr. Brennan: I object.

104

A. (Continuing) He said, "Go ahead there and swing the cases—the cases when they come up."

Q. When you mention Tom you mean this stevedore that you referred to previously? A. Yes, sir.

Q. The boss stevedore, is that right? A. Yes, sir.

By the Court:

Q. Is that the man that was giving the orders to the gangs? A. Yes, sir.

Q. Including your gang? A. Yes, sir. 105

By Mr. Stapleton:

Q. Do you see him in court now, this Tom?

Mr. Stapleton: Have you got this Tom in court?

Mr. Brennan: Here he is right here (indicating).

106 Q. Is this the man (indicating)? A. Yes.

Mr. Stapleton: What is his name?
Mr. Brennan: Micich.

Q. Now, Mr. Uradich, in your own words just tell us what you saw on the occasion when Anton Uravic met with this accident. A. Well, that case that came up——

Q. Speak slowly. A. I was supposed to give a signal to the winchman——

Mr. Brennan: I object.

107 The Court: He was supposed to give a signal to the winchman. Never mind what you were supposed. What did you do? Did you give a signal?

The Witness: Yes, sir, I give a signal to the winchman.

By the Court:

Q. What was the signal? A. The signal only with the hands. That means go high, that means stop, and that take on the dock (witness illustrating).

108 Q. What was the signal, to stop or move or what? A. Wait a minute. I got to explain now. The case was coming. The winchman don't watch me because he looking down the hold.

By Mr. Stapleton:

Q. The winchman was looking down the hold? A. Yes. He can see the draft himself coming. He stands like that (indicating), handle the

winch with one hand and look down the hold and see the draft coming because the winch is placed right at the coaming of the hatch over the top of the deck. This way he was working (indicating). I was on that side (indicating). But he did not pay attention to me, but he can see the men underneath. 109

Mr. Brennan: I move to strike out "he did not pay any attention."

The Court: Strike it out.

By the Court:

Q. What was he doing, looking down the hatch at the time you gave the signal? A. He was looking at the case, yes, sir, when I was giving the signal. 110

By Mr. Stapleton:

Q. Tell us how this draft came up that struck Uravic. A. This draft came up underneath the coamings and there it stopped, it catch underneath; and then I was giving the signal to the Burton. I said, "Go ahead on the Burton winch." But they was all excited. Tom was there, the stevedore, and when they see him they lose their control of themselves or something like that and so didn't take the slack on the Burton fall. 111

Q. What do you mean? This winchman on the Burton? A. He didn't take the slack. If he was taking the slack like I told him, "all right, go ahead, go ahead on the Burton" I hollered.

Mr. Brennan: I move to strike out all after the word if, that part of it that I could hear. I think it was incompetent.

112 The Court: I don't know what part you want stricken out.

Mr. Brennan: If the stenographer will kindly read from the word if——

The Court: What is it you understood him to say?

Mr. Brennan: If somebody did such and such a thing then so and so would not have happened.

The Court: All right, that is stricken out of course. We cannot take ifs, ands, or buts.

113 *By the Court:*

Q. We only want what you actually saw or did. Go ahead and start again. You say you passed some kind of a signal to this fellow that was looking down the hatch. Is that right? A. Yes, sir.

Q. That is the winchman? A. Yes, sir.

Q. Then there is another fellow working on the Burton boom? A. On the Burton winch.

Q. All right. What was he doing? A. He is taking the case from the hatch to the dock. There

114 is two falls, one up-and-down and one Burton. This one is taking out of the hatch and the other one is pulling on the dock.

Q. Then he had to take up some slack, did he? A. Yes, sir.

Q. Did you signal him to take up the slack or did he take it up himself? A. Yes, sir, I signaled.

Q. All right. When you signaled did he take up the slack? A. No, sir.

Q. He let it all out loose? A. Yes, sir, let it all out loose. If he was taking up the slack——

The Court: Never mind. That is where you get into what we do not want. Never mind if he did. 115

By Mr. Stapleton:

Q. What happened to the draft? A. The draft stuck underneath the coamings and then it was given a little shake on the winch and that case jump from underneath right on top of the coamings against the bulkhead where Uravic was standing.

By the Court: 116

Q. Yes; and where did it go then? A. Then she came back.

Q. Came back to what? A. Then she go on the dock after that.

Q. Well, you say it hit the bulkhead. Where did it move to then? A. She hit Uravic.

Q. That is Uravic, that is the man who is dead? Is that what you mean? A. Yes, sir.

Mr. Brennan: We have not had an answer to your Honor's question what it did after it hit the bulkhead. 117

The Court: No.

Q. I want to know what it did after hitting the bulkhead. After it hit Uravic what did it do? A. It was taken on the dock.

Q. I know, but was it hanging—suspended in the air? A. Yes, sir.

Q. You say it caught against the coaming, jumped over the coaming and against the bulk-

118 head and from the bulkhead against Uravic, is that it? A. No, no. From the bottom of the coamings she slipped up right on top where Uravic was standing against the bulkhead.

Q. Oh, it hit Uravic before it touched the bulkhead? A. Yes, sir, sure.

The Court: All right.

By Mr. Stapleton:

Q. What were your duties there in the gang? What were your duties as a gangway man? A. My duties?

119 Q. Yes. A. My duty was to give a signal to the winchman.

Q. You were to signal to the winchman as the draft came up as to the movement of that draft, is that right? A. Yes.

By the Court:

Q. You gave a signal to the Burton winchman to take up the slack? A. Yes, sir.

Q. What kind of a signal did you give to the other man? A. (Witness illustrates.)

Q. What does that mean? A. Stop.

120 Q. Did he stop? A. He didn't stop. He didn't look at me.

The Court: All right, he did not stop.

The Witness: At the same time he go ahead.

By the Court:

Q. He what? A. He go ahead instead of stop.

Q. I don't understand what you are saying.

You gave him a signal to stop, but what did he do? 121
A. He go ahead.

Q. Instead of stopping he started? A. Yes, that is right.

Q. He made the draft move? A. Yes, moved the draft.

Q. Moved it up or down? A. Moved the draft up.

Q. He moved the draft up and you had given him a signal to stop the draft? A. Yes, sir.

Q. And the other fellow to take up the slack in his line? A. Yes, sir.

Q. What happened when the draft hit Uravic? 122
Where was he knocked to? A. Uravic fall down on the cross-beams where he was standing.

Q. Fell down on what? A. On two cross-beams where he was standing there.

Q. Cross-beams, all right. Did he go down into the hatch? A. No, he fall down on those two beams.

Q. And the two beams were on the deck, is that right? A. Yes, between the coaming and the bulkhead.

By Mr. Stapleton:

123

Q. What was in back of Uravic, some sort of a house? A. That is a carpenter shop; that is a bulkhead.

Q. Well, he was crushed between this draft and the carpenter shop? A. Yes, sir.

Q. While standing on this planking? A. No, he was standing on two beams.

Q. On these two steel beams? A. Yes.

Q. Now, as this draft swung over the coaming and up to the time it struck Uravic, how many

124 feet did it go? A. Three feet. That is all she can go. If it wasn't the bulkhead maybe go a couple of more feet.

Q. Well, did it go three feet? A. Yes, sir.

Q. As it swung three feet did Uravic have a chance to get out of the way?

Mr. Brennan: That is objected to.

The Court: Objection sustained.

Q. As it swung toward Uravic what did he do, if anything, to get out of the way of the draft?
125 A. He got no chance.

Mr. Brennan: I have no objection to his stating what he did.

The Witness: He got no chance. If he got a chance to go away he would not stay there.

Mr. Brennan: I move to strike it out.

The Court: Stricken out.

By the Court:

Q. Just tell us what you saw the man do, what
126 movements he made, if any. A. The man tried to get away with the hands up like that (witness illustrating), but he can't make it, that came too quick on him, see? But he tried to escape but got no chance because there was the beams or something. Maybe when he fall or something maybe got a chance.

Mr. Brennan: I move to strike out "maybe when he fall" and "maybe got a chance".

Mr. Stapleton: I will consent to that. 127
The Court: Strike it out.

By Mr. Stapleton:

Q. State whether or not you saw Uravic do anything before this accident to bring this draft on to himself.

Mr. Brennan: I object to that.
The Court: Objection sustained.

Q. Did you see Anton Uravic in any way pull the draft to him or push it away from him be- 128
fore this accident?

Mr. Brennan: I object to that.
The Court: Overruled.
Mr. Brennan: Exception.

By the Court:

Q. Did Anton Uravic touch the draft when you were looking at him? A. Yes, sir.

Q. What did he do? A. When the draft coming up on him he tried to stop and push away (witness indicating). 129

Q. Never mind about the push. Apparently, you are dealing with a language you are not any too familiar with. Maybe you use words with meanings you do not intend. Keep away from "tried to do" and all that sort of thing. Tell us what you saw him do and not what you think he did. Don't tell us what you think he was going to do. Now, what did you see him do? Did he put his hand on the draft? A. Before he was struck?

130 Q. Yes. A. No, sir. He was waiting to swing——

Mr. Stapleton: You have answered. That is all.

Cross examination by Mr. Brennan:

Q. How long had you known Uravic before his death? A. I know Uravic from the place we work. One year he was working there.

Q. You knew him about a year before his death? A. Yes, sir.

Q. Lived near him? A. No, sir.

131 Q. Did you know his wife? A. No, sir.

Q. What was your occupation on the day of this accident? What was your job on deck that day? A. Gangway man.

Q. The winches which operated the falls going into this number two hold were situated above the deck upon which you were standing? A. Yes, sir.

Q. You were on what they call the well deck and the winches were on the deck above that? A. Yes, sir.

Q. And the winchman could, while operating
132 his winch, look right down into the hold of the ship? A. Yes, sir.

Q. And you say it was your duty when you saw that everything was all right down in the hold to give the winchman the signal to hoist the freight? A. Yes, sir.

Q. That is, when the draft came up to the deck upon which you were standing you would then signal the winchman to stop, is that correct? A. Yes, sir.

Q. Each draft that you took up out of the 133
hold that morning swung a little, didn't it? A. Yes, sir.

Q. And these were very large and heavy cases? A. Yes, sir. They was from two ton up.

Q. All of the cases that you took out before this one that was involved in this case were large and heavy, weren't they? A. Yes.

Q. And were there any as large as the one that is involved in the accident? A. That was the heaviest.

Q. That was the heaviest? A. Yes.

Q. But were there any as large as that? A. 134
No, was around the same size; only the weight was about a half a ton more than the other ones anyhow, over a half a ton.

Q. Well, you say that all of the boxes, all of these large cases, as they came up from the hold swung a little from side to side? A. From side to side. They didn't touch the bulkhead, none of them.

Q. I did not hear you. A. They didn't touch the bulkhead.

Q. They didn't touch the bulkhead? A. No, sir.

Q. Well, how much did they swing? Take the 135
cases that went before this one. How much did they swing from side to side? A. They don't swing much.

Q. Well, can you give us an idea how much they did swing—five inches? A. Maybe a foot or something, a little bit but not much.

Q. Maybe less than a foot? A. Maybe less.

Q. Now, some of those cases were, say, fifteen or eighteen feet long, weren't they? A. Yes, sir.

Q. And perhaps eight or ten feet wide? A.

136 No, they wasn't that wide; was about three feet high and three feet wide all those cases.

Q. But some of them were longer than others? I think that is what you said. A. Yes.

Q. Now, the cases which swung a foot or less, they swung from the forward part of the ship toward the rear that way (indicating), not across the ship? A. No, sir, just a minute.

Q. What? A. The cases come scratching alongside the coamings. When they come to the last coaming, the coaming near the deck, see, have to take the slack of the Burton.

137 Q. I am not asking you anything about that. I move to strike it out. A. I got to explain.

Q. What I am asking you is this, talking about the cases that came up the hold before this case: Did they swing fore and aft or across the ship? A. They didn't swing.

Q. You told us that they swung a foot or less. A. That is all, a little bit.

Q. That is what I am asking you. A. Yes.

Q. Now, did they swing fore and aft or across the ship? A. Fore and aft.

Q. But they did not touch the coaming? A. No, sir. They touch the coaming, they didn't touch

138 the bulkhead, I mean.

Q. We are not talking about the bulkhead at all. We are talking about the coamings of the hatches. A. Well, they was touching the coaming.

Q. Then even a fifteen-foot case would touch the coaming, is that right? A. Fifteen foot? Yes, but very little.

Q. An eighteen foot case would touch the coaming? A. Yes, sir.

Q. Which side of the coaming, fore or aft? 139
A. Aft.

Q. In other words, what you want the Court and jury to understand is that each case as it came up rubbed against the coaming aft? A. Yes, sir.

Q. And that is where Uravic was stationed when the accident happened, in the aft part of the hatch? A. Yes, sir.

Q. Who was present when you spoke to Tom, the foreman, about this boom? A. Well, I don't know if there was somebody around there.

Q. Was there anybody there that you know 140
when you spoke to him? A. I can't say if the man is dead.

Q. I don't hear you. A. He was the only man on deck with me, near my side. The winchman was away on top.

Q. How many men were on deck with you? A. With me was only Uravic, supposed to be, the hooker-on man.

Q. Just you and he on that deck? A. Not on that deck, was plenty of men, but in that gang, in that part of the hatch.

Q. Weren't there twenty or thirty men around that hatch? A. Around the hatch? 141

Q. Yes. A. No, sir.

Q. How many men were there altogether? A. We were only nine men in two gangs.

Q. Well, all those nine men were right there where they could hear you, weren't they? A. No, sir.

Q. Where were you when you spoke to Tom? A. I was on deck.

Q. We know that. A. Between the hatch and the side of the ship.

142 Q. The dock side of the ship? A. The dock side of the ship.

Q. And where was Tom, right there with you? A. Right there with me.

Q. What do you claim that you said to him? A. I said the boom is too high.

Q. How high was it above the hatch? A. It was about seven feet. The fall was hanging seven feet from the rear bulkhead or aft bulkhead—coamings.

Q. The fall descending from the boom was seven feet? A. Seven feet from the coamings.

143 Q. From which coaming? A. Aft.

Q. Now, there was a seven-foot space between that fall as it went down into the hold and the aft coaming? A. That is right.

Q. And was it that way all morning before the accident happened? A. Yes, sir.

Q. Was it that way after the accident happened? A. Yes, sir.

Q. After Uravic was injured and taken off the ship you men went right on with the job, did you? A. Yes, sir.

Q. Took more large and heavy cases out? A. We got only two left after that one.

141 Q. I don't hear you. A. We got only two left after that one.

Q. Well, you took them out with the boom in the same position, didn't you? A. Yes, sir.

Q. Did the two cases that you took out after the accident scrape against the coaming? A. Just the same.

Q. Was it eight o'clock in the morning when you spoke to Tom about it? A. No, sir, it was ten o'clock.

Q. Oh, when you started on the heavy cases? 145
A. When we started on the heavy cases.

Q. And in your opinion nobody heard you but the dead man? A. He was there, the only man was around, because we don't holler, just say, "The boom is too high." "Oh, never mind," he says, "go ahead."

Mr. Brennan: May we have that read?

(The last answer was read by the stenographer.)

Mr. Stapleton: Who said that?

Mr. Brennan: Tom.

146

Q. So you do not holler on board ship? A. I don't holler.

Q. You don't talk any louder on board ship than you do here? A. I don't used to.

Q. What are you, a motorman? A. Yes, sir.

Q. When you want somebody to get off the track you can talk louder than you are now? A. I don't throw them off.

Q. I say, when you want somebody to get off the track you can talk louder than you are talking now, can't you? A. I never.

Q. What? A. I stop the car and wait. I am 147
paid for it.

Q. Now, as I understand it, when this particular load came up it rubbed against the coaming on the deck upon which you were standing, is that right? A. Yes, sir.

Q. How high does that coaming extend above the deck? A. It was about three foot (indicating).

Q. And as the draft came up it rubbed against the coaming on the afterside? A. Yes, sir.

148 Q. You saw it doing that and you knew that when it came above the coaming it would naturally go aft, didn't you? A. Yes, sir.

Q. Did you say anything to Uravic? A. What?

Q. Did you say anything to Uravic? A. No, sir. But——

Q. Wait a minute now. As this twenty foot or twenty-four foot box came up you say that you gave a signal to the winchman to stop? A. Yes, sir.

Q. Where was the draft when you gave that signal to stop? A. The draft was right at the coaming, underneath the coaming.

149 Q. Was it resting on top of the coaming or against the side of the coaming? A. I don't get you.

Q. Was it resting on top of the coaming? Suppose that to be the coaming (indicating). Was it on top of it or against the side like that (indicating)? A. It was on the side underneath.

Q. Well, that big case was coming up slowly, wasn't it? A. It came up slowly so far.

Q. And then when you gave the winchman the signal this case was right up on the deck within eight or ten feet of the winchman, wasn't it, so

150 that he could see it right here? A. Yes, he could see the case right there.

Q. The deck he was on was only about eight feet high? A. That is all.

Q. So that he had no difficulty in seeing this case right where it was? A. (Witness nods his head.)

The Court: He shakes his head yes.

Q. When you gave him the signal to stop he didn't stop? A. No, sir.

Q. How long had you known that winchman? 151
A. The winchman? Oh, a long time.

Q. How long? A. Three years.

Q. And you had seen him operating winches for three years? A. Yes, sir.

Q. Do you know his name? A. Yes.

Q. What is his name? A. Harry Erok.

Q. And did you also know the winchman who was operating the Burton winch? A. Know him, too, for a couple of years.

Q. And had seen him operating winches for years? A. Yes, sir.

Q. Then when the winchman did not obey your 152
signal and the case came up how high did it go above the hatch coaming before it went aft toward the bulkhead? A. Not much, only about half a foot.

Q. Half a foot? A. Half a foot or one foot.

Q. Now, then, do you wish the Court and jury to understand that this great, big, heavy case came up above the coaming and then swung rapidly back against this bulkhead? Please answer. Is that what you want us to understand?

By the Court:

Q. Yes or no. A. Yes, sir. 153

By Mr. Brennan:

Q. Where had Uravic been working as this case came up from the hold of the ship, where had he been standing? A. He was standing right on the two cross-beams on the rear side on the aft part of the hatch.

Q. Had he been standing there all of the time? A. Yes, sir.

154 Q. As this case came up? A. Yes, sir.

Q. Had he been standing there while the smaller boxes were coming up? A. No, when the small boxes were coming up he was hooking on those drafts.

Q. Hooking the Burton fall or what? What do you mean by hooking on? A. When we got a small draft——

By the Court:

Q. Where did he hook? Did he hook the Burton or the other? A. On the Burton fall. We split
155 falls on the small drafts and use two falls together with the big drafts. So he got the Burton always to hook on when we got the small draft.

Q. He was using both hooks then? A. Yes, the Burton hook when we got a small draft but when we got heavy lift he used——

Q. Wait a minute. Never mind what you do. So this man used both hooks at different times? A. Yes, sir.

By Mr. Brennan:

156 Q. As I understand it, when you were raising the smaller boxes he was using this hook to attach the Burton fall or winch to the up-and-down, with the smaller boxes, is that right? A. With the general cargo, small boxes.

Q. Then when you came to these twenty-four feet or twenty feet cases you adopted a different procedure, is that right? A. No, sir.

Q. Tell us what you did with it or what you intended to do. A. No small boxes. That was eight or nine heavy lifts, that is why got the falls

together. Use the Burton hooks before the heavy lifts. 157

Q. Was that before ten o'clock? A. Before ten o'clock.

Q. After ten o'clock, when he was lifting out these heavy cases, did he always stand there? A. That is where he sent him to swing the cases around.

Q. Will you please answer me? When you started at ten o'clock to take out these heavy cases did Uravic go in the position aft of the hatch where he was when the accident happened? A. Yes, sir.

158

Q. And he remained there while those eight cases were being taken out? A. Yes, sir.

Q. And you say that Tom, the foreman, or whatever he was, told him to go there? A. Yes, sir.

Q. Well, he could have handled these cases just as well without going aft of the hatch, couldn't he? A. No, he can't.

Q. What?

The Court: Don't shake your head. Say no or yes, whichever your shake means.

The Witness: No, he can't.

159

Q. Then as these seven and eight cases came up what did you and Uravic do with them, when they came above the hatch coaming? A. When the case came above the coaming he take the slack on the Burton winch.

Q. I am not talking about the winchman. What did you and Uravic do after the drafts came above the hatch coaming? A. Above the hatch coaming?

Q. Yes. A. Well, Uravic swung them around.

Q. Uravic alone? A. And Dominick; was two men, was two men to swing the drafts around.

160 Q. What is Dominick's last name, do you know? A. I don't know.

Q. Was Dominick there when Tom told Uravic to stand in the aft part of the ship? A. Dominick wasn't in the aft part of the ship.

Q. He wasn't there? A. He wasn't there, no.

Q. Was he there at ten o'clock when Tom told you to go ahead, that the boom was all right? A. No. He came around after; he came around after.

Q. So that as each draft came above the coaming it was Uravic's duty to turn it around and
161 head it toward the dock? A. Yes, sir.

Q. And when this draft came up he put his hands on it to turn it around, didn't he? A. (No answer.)

Q. Please answer whether he did or not? A. He got no chance to do that.

Mr. Brennan: I move to strike it out.

The Court: Strike out "He got no chance to do that".

By the Court:

162 Q. Did he put his hands on it or not to turn it around? A. He put his hands on (witness illustrating)—I don't know how to explain.

By Mr. Brennan:

Q. I will ask you again. When this draft came up above the hatch coaming— A. I——

Q. Wait. When the draft came up above the hatch coaming and it stopped, didn't it, before it swung aft? A. How could it? It didn't stop.

Mr. Brennan: I move to strike it out. 163

The Court: No. He says it didn't stop.

Mr. Brennan: He said: "How could it?"

The Court: "How could it" is stricken out. The other part stands.

Q. Didn't this draft, before it struck Uravic, stop going up, before it went aft? A. After it swung.

Q. No, before it went aft, didn't it stop going up? A. It stopped, sure it stopped. If he was——

164

The Court: All right. Never mind reasoning about it.

Q. When this heavy draft came up above the hatch coaming, the winchman stopped it, didn't he? A. Yes.

Q. Then it swung aft? A. Yes, sir.

Q. And caught Uravic? A. Yes, sir.

Q. While it was stopped and before it caught Uravic, didn't he put his hands on it to turn it or do something with it? A. No, sir; he got no time to do——

165

Mr. Brennan: I move to strike out "he got no time".

The Court: Strike it out.

Q. Then he did nothing until it struck him? A. It struck him.

Q. All right? A. That is all.

Q. And how long did it stand before the hatch, before it moved aft to where he was standing? A. Not even a second.

166 Q. A second or so? A. Not even a second; about a second.

Q. About a second. And while the draft stood there above the hatch, what was Uravic doing for that second? A. Was standing there, that is all.

Q. Standing looking at it? A. Yes, sir.

Q. And when this very heavy case struck Mr. Uravic, did it then go back over the hatch again? A. Yes, sir.

Q. Fast or slow? A. (No answer.)

167 *By the Court*:

Q. Fast or slow? A. Fast.

The Court: All right.

By Mr. Brennan:

Q. After striking Uravic, did it go back as fast as when— A. It came back——

Q. Wait, please?

The Court: Listen to what you are being asked.

168

Q. After the draft struck Uravic, did it go slowly or rapidly as it went back? A. No, slowed the speed a little.

Q. It slowed up a little? A. Slowed up.

Q. Then after striking Uravic, the Burton winch took that draft over to the side of the ship, didn't it? A. Yes, sir.

Q. And before taking it over, did anybody straighten it out so that it was pointing toward the dock? A. Yes, sir.

Q. Who did that? A. I think I put my hand on 169
and the other—Dominick and the rest that was there.

Q. Well, I will use this pad as an illustration. Suppose this open space here to be the hatch, and here is the afterpart of the ship, and here is the bow (indicating). Now, as this case came up out of the hold, it came up that way (indicating), didn't it? A. It come the other way, like that (indicating), see, with one end on the corner here (indicating).

Q. You don't understand me, perhaps. Suppose that is the afterpart of the ship (indicating)? 170
A. Yes, sir.

Q. And this is the bow and here is the hatch coaming (indicating). Now, this draft came up that way (indicating), didn't it? A. Yes, sir.

Q. That is, with the broad side of it toward the dock? A. It wasn't straight.

Q. Oh, please answer my question? A. It was corner to corner.

Q. Something like that (indicating), was it? A. Yes.

Q. I see. As this came up above the coaming, it was necessary to turn it that way (indicating)? A. Yes, sir. 171

Q. In order to unload it? A. Yes, sir.

Q. That was done with every case, wasn't it, as it came up above it was turned that way (indicating)? A. Yes, sir.

Q. And who did that, who turned it? A. Uravic and the other fellow, Dominick.

Q. Just two men? A. Yes, sir.

Q. They would take it just with their hands no matter how heavy the case was and swing it

172 slowly around and then it would go over to the side of the ship (indicating)? A. Yes, sir.

Q. Now, you said something about the Burton winchman, that he did not obey orders either, is that right? A. Yes, sir.

Q. In other words, when this heavy case came above the coaming up here (indicating) and stopped, then it was the duty of the Burton winch to take it over to the side of the ship? A. That was the duty; but he should take it before, this slack up before she come above the coamings.

Mr. Brennan: I move to strike it out.

173 The Witness: Before she come——

The Court: I will strike out the whole answer. Ask the question again. I don't understand half of what he said.

Mr. Brennan: Yes.

Q. When these cases came above the hatch coaming then the Burton winch would take the case and carry it over to the dock, is that right? A. Yes, sir.

Q. This particular case that injured this plaintiff's intestate, the dead man, that case when it came above the coaming should have been taken by

174 the Burton winch and carried over to the side of the ship? A. Yes, sir.

Q. And that should have been done when the up-and-down motion ceased, stopped? That is, when it stopped going up then the Burton winch should have taken it over, that is correct, isn't it? A. Yes, sir.

Q. And did you signal the Burton winchman to do that? A. Yes, sir.

Q. And he did not do it? A. He didn't take quick enough the slack up to prevent the swing.

Q. So that you wish the Court and jury to understand that if the Burton winchman had obeyed your orders or your signal that then this accident would not have happened? A. Yes, sir. 175

Q. Now, Mr. Uradich, all of these cases as they came up from the hold rested against the afterpart of the coaming, didn't they? A. Yes, sir.

Q. And each one as it came up above the coaming went right back against the bulkhead, didn't it? A. No, sir.

Q. This was the only one that did that? A. Yes, sir.

Q. Then as each case came up it pressed against the afterpart of the coaming and as it was raised above the coaming it did not go aft at all, is that right? A. Yes, sir. Do you know why? 176

Q. No.

The Court: Never mind why.

Q. That is the fact, is it? A. Yes, sir.

Q. I will first show you two photographs, Uradich, and ask you if those two photographs correctly show the type and style of the cases that you were taking out of the ship on that morning (handing the photographs to the witness). A. I didn't—— 177

The Court: Never mind talking about it. Does that correctly or fairly show the type?

The Witness: That is the type.

The Court: Yes?

The Witness: Yes.

Mr. Brennan: I will offer them in evidence.

178 *By Mr. Stapleton:*

Q. Is this the type of draft that struck Uravic (indicating)? A. The long one, the long case.

Q. That is this one (indicating)? A. Yes, sir.

Mr. Stapleton: I object to the introduction of the other one, then.

The Court: What does the other one purport to be, Mr. Brennan? What does this other one purport to be?

Mr. Brennan: They are both illustrations, taken on the morning of the accident,

179 of the boxes that were taken out of the hold of the ship.

The Court: One does not purport to be the type of case that was coming out at the time of the accident.

Mr. Brennan: Yes. I will let your Honor know which one is.

The Court: Well, he accepts one as being the type, the long one, as he says, but the other one he does not seemingly accept.

Mr. Brennan: I am informed that this

180 case, this long case——

The Court: Ask him.

By Mr. Brennan:

Q. I show you this photograph and ask you if the long case shown on there is the one that struck Uravic. A. Yes, the long one, but not the other one.

The Court: What is the other one?

Mr. Brennan: The other one is a type of the other cases taken out before the accident happened. The picture is only to show the type of case taken out before the accident happened. 181

The Court: All right, we will receive that with that limitation.

(The photographs were received in evidence marked Defendant's Exhibits A and B.)

Q. I show you four other photographs and ask you if they correctly represent the number two hatch and the surroundings on the steamship "Hamburg" on the day of the accident (handing the photographs to the witness). A. Yes, sir. 182

Mr. Brennan: I offer them in evidence.

(The photographs were received in evidence and marked Defendant's Exhibits C, D, E and F.)

Q. I show you Defendant's Exhibit E and I call your attention to the man standing leaning over the coaming with a peaked cap on and ask you if that is the position occupied by Uravic just before he was struck, if that is where he stood (handing the photograph to the witness). 183

Mr. Stapleton: Which question is it? The position?

Mr. Brennan: Well, I did not mean that he was leaning over.

Q. Is that about where he was standing? A. That is about where he was standing, yes, sir.

181 Q. And that is about a three-foot space, is it? A. Yes, sir.

Q. Between the coaming and the bulkhead? A. Yes, sir.

Q. And the beams that he was standing on were steel hatch beams, weren't they? A. Yes, sir.

Q. Mr. Uradich, do you remember on the morning of this accident, right down there on the dock, making a statement to anybody as to what you had seen and how it occurred? A. Yes, sir.

Q. You made a statement to Mr. Gardella who sits here (indicating), didn't you? A. I guess so; I don't know; I don't remember.

185 Q. And you signed your name to that paper, didn't you? A. I guess so.

Q. You put your initials on each page of the paper as he wrote it out? A. Yes, I did.

Q. And then at the end you signed your name to it and this is your signature, isn't it (handing a paper to the witness)? A. Yes, sir.

Q. And you told Mr. Gardella the truth that morning, didn't you? A. I guess so.

Q. Why do you guess? Don't you know that you told him? A. I said the same.

Q. You told him the truth, didn't you? A.

186 Yes, sir.

Q. Was Dominick at the afterpart of the hatch with Uravic? A. Yes, sir.

By the Court:

Q. You mean at the time the accident happened? A. The same time.

By Mr. Brennan:

Q. How close was he to Uravic? How close

was he standing to where Uravic was standing? 187
A. About three or four foot.

Q. He got out of the way of this case, didn't he—Dominick? A. He was standing out of the way.

Q. Well, he moved out of the way, didn't he, when the case started to come back? A. Well, I don't know. I can't see everything.

Q. Do you remember saying this to Mr. Gardella, on the morning of this accident: "A case was being lifted out of the hatch and Dominick and Tony were on the afterpart of the hatch on the main deck and near the offshore side and 188
were pushing on the wire sling around one end of the case to hold it out from the underpart of the coaming." Did you tell that to Mr. Gardella? A. I don't remember about that.

Q. You say you don't remember? A. I don't remember.

Q. Will you swear you did not tell him that? A. I can't swear, but I can't remember what I says; time passes; I don't remember.

Q. If you did tell him that on the morning of the accident was it true, that these two men were pushing on the wiring of the crate, pushing it away from the coaming? A. I don't know. 189

Q. You don't know? A. No, sir.

Q. Do you know what they were doing that morning? A. I don't remember what I say in the statement.

Q. Well, do you remember what they were doing that morning, whether they were pushing on the crate or not? A. Pushing on the——

By the Court:

Q. On the draft? A. On the draft?

190 *By Mr. Brennan:*

Q. Yes. A. Maybe they was pushing, too. I don't know because I can't see everything, you know.

Q. Well, when did you make up your mind that Uravic did not touch it at all? When did you come to that conclusion that Uravic did not touch it before he was hurt? A. When I come to that conclusion?

Q. Yes. A. I don't know myself.

Q. Was it after you spoke to some lawyer? A. No, sir.

191

Q. Or some lawyer's assistant about it? A. No, sir, because I can't remember if he was pushing or not. That is what I tell you.

Q. You don't remember now whether Uravic put his hand on this case or not, do you now say? A. I say keep his hand like that (indicating), that is what I say before, but you put his hands here (indicating).

Q. I will ask you once more— A. That is what I say.

Q. —if you told Mr. Gardella on the morning of this accident, right after the accident hap-

192 pened, that these two men were pushing on the wire sling around one end of the case to hold it out from the underpart of the coaming. Was that true or not? A. Maybe I said; maybe it was true, maybe not, because I can't remember good.

Q. You don't know now whether it is true or false, do you? A. No false. I don't remember what I tell him.

Q. Do you remember what happened that morning? A. That is what I say. I tell you he keep his hands up like that (indicating).

Q. Do you remember what happened that morning? A. Yes, what I said before. 193

Q. Do you remember what you told Mr. Gardella? A. I said maybe that true or not, I don't know. I can't remember what I say; I was too excited.

The Court: Do not waste any more time. Mark that in evidence if it is a claimed prior contradictory statement.

Mr. Brennan: Very well.

The Witness: I was too excited that day.

194

Q. Did you say anything to Mr. Gardella about the winch-man not obeying your signals?

Mr. Stapleton: I object to it, your Honor, unless the statement is put in evidence.

Mr. Brennan: I will offer the entire statement in evidence.

(The paper was received in evidence and marked Defendant's Exhibit G.)

(Mr. Brennan read Defendant's Exhibit G to the jury.) 195

By Mr. Brennan:

Q. Is that statement, as I have just read it to the Court and jury, a correct statement of how this accident happened? A. Yes, about that.

Q. Then these two men did put their hands on the case and shove it away from the after hatch coaming?

196 The Court: There is no need of going all over that.

Mr. Brennan: All right, I will stop right now. Just one more question.

Q. There were two gangs working on this hatch on this morning. That is not unusual, is it? A. No, sir.

Q. In fact, you have seen occasions when there were three gangs working on hatch number two? A. Yes, sir.

Q. Sometimes as many as four gangs working
197 on one hatch? A. Yes, sir.

Q. And that has been your experience in all of the stevedoring companies you have been connected with? A. Yes, sir, but only I——

The Court: Wait a minute. Yes is the answer.

Mr. Brennan: That is all.

Re-direct examination by Mr. Stapleton:

Q. Now, this draft that struck Uravic was how long? A. Was about twenty feet, I guess.

198 Q. You said as it came up it touched the coaming, it hit against the aft part of the shaft, is that right? A. Yes, sir.

Q. Did all the other heavy drafts, from ten o'clock on, hit against the side of the shaft? A. They was crashing up, every one.

Q. Every one since ten o'clock. A. None of them go against the bulkhead (indicating).

Q. None of them hit against the bulkhead except the one that hit Uravic? A. The one that hit Uravic, yes, sir.

Q. If this boom that you referred to previously had been raised three feet, would any of these drafts have hit against the side of the ship? 199

Mr. Brennan: That is objected to.

The Court: Objection sustained.

Q. State what effect, if any, the raising of the boom would have had upon any of the drafts, on any of the heavy drafts since ten o'clock.

Mr. Brennan: That is objected to, if the Court please.

Mr. Stapleton: I will withdraw that. 200

Q. State what effect, if any, the raising of the boom would have had on the drafts that were raised previous to this accident, as to whether or not they would hit against the side of the hatchway coming up.

Mr. Brennan: I object to it.

The Court: Objection sustained.

Mr. Stapleton: Exception. That is all. That is the plaintiff's case.

Mr. Brennan: If your Honor please, I move to dismiss upon the ground it appears affirmatively that the negligence was the negligence of a fellow employee of the plaintiff for which this defendant is not responsible. 201

The Court: You say you do not rest on the common law, you are resting on the Jones Act?

Mr. Stapleon: The Jones Act.

The Court: And the negligence that is

202 complained of is the contributory negligence of a fellow servant, of either one or both of these men. Even this man Tom is a fellow servant under the common law. Under that situation there is no getting away from this Clark v. Montezuma case, which is a Second Department case, which holds the Jones Act does not apply to a British ship in an American port.

Mr. Stapleton: Well, the situation, as I understand it, has been changed since the Haverty decision.

203 The Court: No. The Haverty case does not affect the situation at all. The Haverty case merely makes the longshoreman a seaman. Making him a seaman, he is an American seaman working on a German vessel in this case. This is the seaman case, this Clark case. So that the only effect of the Haverty case is to make this man a prototype of the deceased in the Clark case, that is an American seaman.

Mr. Stapleton: I know, Judge. All the decisions, including the Montezuma, the Steppani case, and so forth, were on the

204 basis that this Act applies only to American registered vessels. Now a close reading of the Haverty case will show that Judge Holmes intended that a broad scope be given to that Act, that it not only included seamen but also included longshoremen.

The Court: Of course. There is no dispute about that. A longshoreman is a seaman.

Mr. Stapleton: But under the Haverty 205
case and under other cases——

The Court: Wait a minute. We are all agreed on that, that a longshoreman is a seaman. Now, then, in the Clark case an American seaman on a British vessel may not have the benefit of the Jones Act.

Mr. Stapleton: As against the ship that may be so. But this is against the stevedore company. This is a case where the man is hired in New York City and the suit is against the stevedore company, not against the ship. All those cases have been 206
cases practically *in rem*, in libel.

The Court: Wait a minute. It does not make any difference whether it is against the ship or who it is against. The theory of holding that the Jones Act does not apply is that the accident is claimed to have happened on a piece of territory that is not United States territory. It is the *locus*, the site of the accident that is controlling there, what law shall apply, whether the law of the flag or the law of the seaman. It is the law of the flag that controls. The
law of the flag is not an American law; 207
therefore it is not the Jones Act.

Mr. Stapleton: Well——

The Court: I have the Haverty case right here. The only point involved in the Haverty case is whether or not the particular kind of work that is involved is or is not of a character that would bring him within the terms of seaman. Then he lays down a rule to apply. So we get by the Haverty case and we hold that this man is

208 a seaman. Then you are up against the Clark case. As a matter of fact, in the Clark case they had both in there, they had both the stevedore and the vessel—they had a charterer of the vessel in.

Mr. Stapleton: There is no question, as regards the Montezuma case and all the other cases, all those decisions have been knocked into a cocked hat with the Haverty case.

The Court: I do not agree with you. The Clark case, 217 A. D. 172, and in
209 the Pinordo del Rio case, which is 16 Federal, Second Series, 984, United States Circuit Court of Appeals, over here in Manhattan, has a corresponding holding and follows the Clark case and cites it. The complaint is dismissed and exception to the plaintiff.

Mr. Stapleton: Will you give me a stay of sixty days to make a case, Judge?

The Court: Oh, yes.

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210 **Statement That Case Contains All the Evidence.**

This case contains all the evidence had and adduced upon the trial of this action, as well as the exceptions of both sides.

Defendant's Exhibit A

Defendant's Exhibit A.

211

(REPRINT.)

Photograph.

212

213

214

Defendant's Exhibit B.

(REPRINT.)

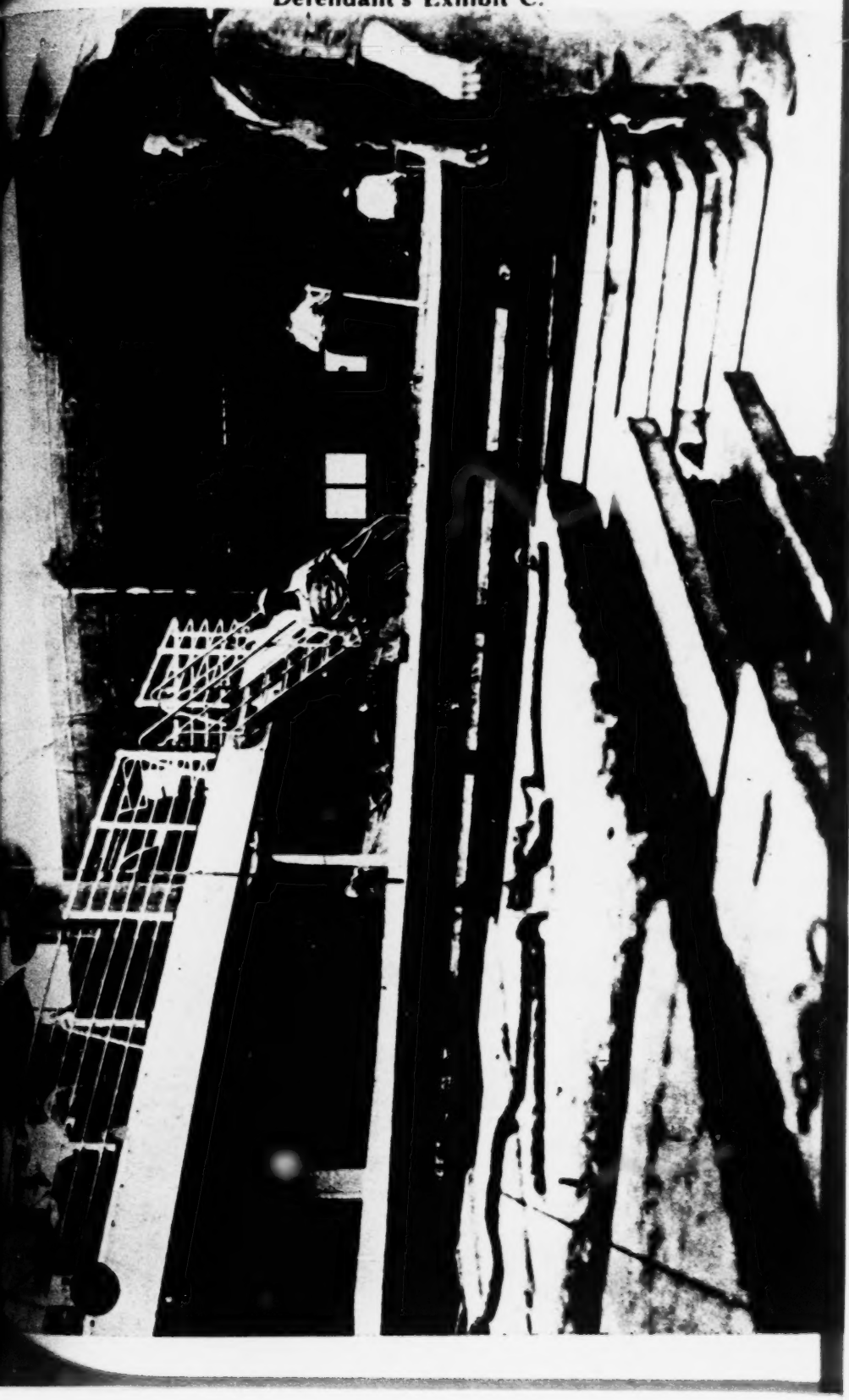
Photograph.

215

216

Defendant's Exhibit B.

Defendant's Exhibit C.



Defendant's Exhibit C.

217

(REPRINT.)

Photograph.

218

219

Defendant's Exhibit D.

220

(REPRINT.)

Photograph.

221

222

Defendant's Exhibit D.

Defendant's Exhibit E.

Defendant's Exhibit E.

223

(REPRINT.)

Photograph.

224

225

Defendant's Exhibit F.

226

(REPRINT.)

Photograph.

227

228

Defendants Exhibit F.

Defendant's Exhibit G.

July 15, 1926. 229

Romano Yuretich, says I live at 422 Degraw Street, Brooklyn, N. Y. I am 35 years old and married. I have worked as a longshoreman about 14 years and have worked at Pier 86 North River, New York City about four years.

I have worked as a gangwayman eight or more years.

On July 13, 1926 I was working as gangwayman at hatch #2 of the S.S. "Hamburg" docked at Pier 86 North River, New York City and started working at 8 A. M. We were discharging from the 230
'tween deck.

There were two gangs working in the hatch.

One gang on general cargo and our gang on the heavy lifts.

In our gang we had five men on deck which counted Tony Urabic who was hurt at about 10:40 A. M. Two of the men were winchmen who were at the winches on top of the carpenter shop, and an extra man Domenick.

Tony was the hooker on.

We were taking heavy cases out of the 'tween deck and had taken out about nine of the cases when the accident happened. 231

A case was being lifted out of the hatch and Domenick and Tony were on the after part of the hatch on main deck and near the off shore side and were pushing on the wire sling around one end of the case to hold it out from the under part of coaming, and as the case was lifted one end of it was against the inside of the main deck hatch coaming and when the case was lifted clear

Defendant's Exhibit G.

232 of the coaming it swung aft toward Tony and jammed him against the bulk-head or carpenter shop. Domenick was on the inshore side of Tony and got out of the way, but Tony could not get out of the way as it swung in too quick.

I was giving the signals to the winchman. The winchman can see the hold from where they are located on top of the carpenter shop.

There is about three feet between the aft part of the hatch and carpenter shop and there were two cross beams in this space between carpenter shop and hatch. These beams were on edge and Tony was on the beams when he was hurt.

233 Myself and Tony and other deckmen placed these beams this morning at 8 A. M.

There was plenty of room to put these beams besides where we placed them but we place them between the carpenter shop & coaming to have them handy and to have them out of our way.

The case we were handling when the accident happened was about twenty feet or more in length and three feet wide and three feet high and weighed about three ton.

We had two wire slings around the case about five feet from each end of the case.

234 The case was coming out the hatch with its length fore and aft and Tony had to take hold of the case to swing it around to send it across ship to avoid the guides, stays and ladders.

The hatch is about twenty-five feet fore and aft and about fifteen feet athwart ships.

There were twelve men in the 'tween decks, six men in each gang, and there were five men on the deck in the other gang working on forward side of hatch #2.

Defendant's Exhibit G.

The winches we were using were in very good 235
condition, we had no trouble with the winches.

There is no other way to handle a heavy case in a safe manner than with the two wire slings as we were doing it this day. I have no knowledge of anything out of order or defective and the only reason for the accident was that the case was a long one.

The slings were all in good shape. The day is a bright, warm day.

I have been acquainted with Tony about one year.

After the accident we gave Tony a drink of 236
water then we put him in a box and took him to the dock by means of the winch.

(s) ROMANO YURETICH.

(s) C. J. GARDELLA,
July 13 '26

237

Affidavit of No Opinion.

238

State of New York,
County of New York—ss.:

FREDERICK R. GRAVES, being duly sworn, says:

I am the attorney for the plaintiff-appellant in this action and am familiar with all the proceedings herein.

No opinion was delivered by the Court below.

FREDERICK R. GRAVES.

239

Sworn to before me this
day of August, 1927.

PAUL C. MATTHEWS,
Notary Public,
New York Co.

240

Stipulation Settling Case.

241

IT IS HEREBY STIPULATED by and between the attorneys for the respective parties hereto that the foregoing case contains all the evidence taken upon the trial and all exceptions of all parties and that an order may be entered herein settling the same as such and ordering the same on file without further notice.

Dated, New York, August , 1927.

FREDERICK R. GRAVES,
Attorney for Plaintiff-Appellant.

242

ALMY, VAN GORDON & EVANS,
Attorneys for Defendant-Respondent.

Order Settling Case.

On the foregoing stipulation the above case on appeal which contains all the evidence and exceptions of all parties is hereby settled and ordered on file.

Dated, New York, August , 1927.

243

WILLIAM B. CARSWELL,
J. S. C.

Stipulation Waiving Certification.

244

IT IS HEREBY STIPULATED by and between the attorneys for the respective parties hereto that the foregoing are true copies of the judgment roll, the notice of appeal, the case and exceptions as settled; the order dismissing the complaint and the whole thereof now on file in the office of the Clerk of the County of Kings, and that certification thereof is hereby waived and that an order directing the filing of the record in the Appellate Court may be entered without further notice.

Dated, New York, August , 1927.

245

FREDERICK R. GRAVES,
Attorney for Plaintiff-Appellant.

ALMY, VAN GORDON & EVANS,
Attorneys for Defendant-Respondent.

Order Filing Record in Appellate Division.

Pursuant to the foregoing stipulation, it is ordered that the foregoing printed record be filed
246 in the office of the Clerk of the Appellate Division of the Supreme Court, Second Judicial Department.

Dated, New York, August , 1927.

WILLIAM B. CARSWELL,
J. S. C.

ADDITIONAL PAPERS TO COURT OF APPEALS.

Notice of Appeal to Court of Appeals.

247

NEW YORK SUPREME COURT,

KINGS COUNTY.

ANNA URAVIC, as Administratrix of the Goods, Chattels and Credits which were of Anton Uravic, Deceased,

Plaintiff,

—against—

F. JARKA COMPANY, INC., and UNITED AMERICAN LINE, INC.,

248

Defendants.

Sirs:

PLEASE TAKE NOTICE that pursuant to leave granted by order of the Appellate Division of the Supreme Court for the Second Judicial Department, dated April 8th, 1929, and entered in the office of the Clerk of the said Appellate Division on the 8th day of April, 1929, the plaintiff Anna Uravic, as Administratrix of the goods, chattels and credits which were of Anton Uravic, deceased, hereby appeals to the Court of Appeals of the 249
State of New York from the judgment entered in the office of the Clerk of the County of Kings on the 7th day of March, 1929, on the order of the said Appellate Division dated February 15, 1929, affirming the judgment entered herein in the office of the Clerk of the County of Kings on

250 the 7th day of April, 1927, and from each and every part of said judgment as well as the whole thereof.

Dated, New York, April 27th, 1929.

Yours, etc.,

PAUL C. MATTHEWS,
Attorney for Plaintiff,
Office & P. O. Address,
11 Broadway,
Borough of Manhattan,
251 City of New York.

To:

ALMY, VAN GORDON & EVANS, ESQS.,
Attorneys for Defendants,
140 Nassau Street,
New York City.

WILLIAM E. KELLY, ESQ.,
Clerk.

252

Order of Affirmance.

253

At a Term of the Appellate Division of the Supreme Court of the State of New York held in and for the Second Judicial Department at the Borough of Brooklyn, on the 15th day of February, 1929.

Present—Hon. Edward Lazansky,
Presiding Justice.
" " Adelbert P. Rich,
" " J. Addison Young,
" " William F. Hagarty, 254
" " Townsend Scudder,
Justices.

Anna Uravic, as Administratrix of the Goods, Chattels and Credits which were of Anton Uravic, deceased,

Appellant,

—against—

F. Jarka Company, Inc.,

Respondent,

United American Line, Inc., 255

Defendant.

The above named Anna Uravic, as Administratrix, etc., the plaintiff in this action having appealed to the Appellate Division of the Supreme Court from a judgment of the Supreme Court entered in the office of the Clerk of the County of Kings on the 7th day of April, 1927, herein, and

256 the said appeal having been submitted by Mr. Paul C. Matthews of Counsel for the appellant and submitted by Mr. Thomas Brennan of Counsel for the respondent, and due deliberation having been had thereon,

IT IS ORDERED AND ADJUDGED that the judgment so appealed from be and the same is hereby unanimously affirmed, and that the respondent recover of the appellant the costs of this appeal.

Enter,

E. L.,

257 P. J.

Judgment of Affirmance.

SUPREME COURT,

KINGS COUNTY.

ANNA URAVIC, as Administratrix of the Goods, Chattels and Credits which were of Anton Uravic, deceased,

Plaintiff,

258 —against—

F. JARKA COMPANY, INC., and UNITED AMERICAN LINE, INC.,

Defendants.

The above named plaintiff having appealed to the Appellate Division of the Supreme Court, Second Department, from the order of Hon. William B. Carswell, one of the Justices of this Court, dismissing the complaint of the plaintiff

herein and from the judgment entered thereon 259
by the defendant F. Jarka Company, Inc., on the 7th day of April, 1927, entered in the office of the Clerk of the County of Kings, dismissing the complaint, and for $144 costs, and the said appeal having been duly heard by the Appellate Division of the Supreme Court, Second Department, and after due deliberation, the said Appellate Division of the Supreme Court, Second Department, having ordered and adjudged that the said judgment and order so appealed from as aforesaid, be unanimously affirmed with costs to the defendant F. Jarka Company, Inc., and the
said Appellate Division having sent hither its 260
remittitur filed herein on the 4th day of March, 1929, and the costs of the defendant F. Jarka Company, Inc., having been duly taxed in the sum of $70 80/100.

Now, on motion of Almy, Van Gordon & Evans, attorneys for the defendant F. Jarka Company, Inc., it is

ADJUDGED that the defendant F. Jarka Company, Inc., have judgment against the plaintiff Anna Uravic, as administratrix of the goods, chattels
and credits which were of Anton Uravic, de- 261
ceased, for the sum of $70 80/100 costs as taxed, and that said defendant have execution therefor.

Judgment signed and entered this 7th day of March, 1929.

WILLIAM E. KELLY,
(Seal) Clerk.

Order of Appellate Division Denying Motion for Reargument.

262

At a Term of the Appellate Division of the Supreme Court of the State of New York held in and for the Second Judicial Department at the Borough of Brooklyn, on the 8th day of April, 1929.

Present—Hon. Edward Lazansky,
Presiding Justice.
" " Adelbert P. Rich,
" " Isaac M. Kapper,
263 " " William F. Hagarty,
" " Townsend Scudder,
Justices.

Anna Uravic, as Administratrix, etc., of Anton Uravic, deceased,
Appellant,
—against—
F. Jarka Company, Inc.,
Respondent,
United American Line, Inc.,
264
Defendant.

The above named Anna Uravic, as administratrix, etc., of Anton Uravic, deceased, the appellant in this action having moved this Court for a reargument of the appeal herein and the motion having duly come on to be heard and the

Order of Appellate Division Denying Motion for Reargument.

papers and briefs of the respective parties in support thereof and in opposition thereto having been filed:

265

Now on reading and filing the papers upon which said motion is based and the opposing papers, and upon considering the said papers and all the papers upon which the appeal was heard; and the said motion having been submitted by Mr. Paul C. Matthews of counsel for the appellant and submitted by Mr. John W. Van Gordon of counsel for the respondent;

266

It is ordered that the said motion be and the same is hereby denied.

Enter,

E. L.,
P. J.

267

Order of Appellate Division, Granting Leave to Appeal to Court of Appeals.

268

At a Term of the Appellate Division of the Supreme Court of the State of New York held in and for the Second Judicial Department at the Borough of Brooklyn, on the 8th day of April, 1929.

Present—Hon. Edward Lazansky,
Presiding Justice.
" " Adelbert P. Rich,
" " Isaac M. Kapper,
269 " " William F. Hagarty,
" " Townsend Scudder,
Justices.

[SAME TITLE.]

The above named Anna Uravic, as administratrix, etc., of Anton Uravic, deceased, the appellant in this action having moved for leave to appeal to the Court of Appeals from the order of this Court, entered on the 15th day of February, 1929, and from the judgment entered thereon, herein; and the motion having duly come on to be heard and the papers and briefs of the respective parties in support thereof and in opposition thereto having been filed;

270

Now on reading and filing the papers upon which said motion is based, and the opposing papers, and all the papers upon which the appeal was heard; and due deliberation having been had thereon; and the said motion having been sub-

Order of Appellate Division, Granting Leave to Appeal to Court of Appeals.

271

mitted by Mr. Paul C. Matthews of counsel for the appellant and submitted by Mr. John W. Van Gordon of counsel for the respondent;

It is ordered that the said motion be and the same is hereby granted, and this Court hereby certifies that in its opinion a question of law is involved which ought to be reviewed by the Court of Appeals.

Enter,

E. L.,
P. J.
J. S. C. 272

273

Affidavit of No Opinion.

274

State of New York,
County of New York—ss.:

PAUL C. MATTHEWS, being duly sworn, says:

I am the attorney for the plaintiff-appellant in this action and am familiar with all the proceedings herein.

No opinion was delivered by the Appellate Division, Second Department.

275 PAUL C. MATTHEWS.

Sworn to before me this
29th day of May, 1929.

F. G. BERNHOLZ,
Notary Public,
New York County.
N. Y. Co. Clk's No. 824, Reg. No. 0-9A.
Cert. filed in Kings Co. No. 369.
Commission expires March 30, 1930.
(Seal)

276

Stipulation Waiving Certification of Record to Court of Appeals.

277

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that the foregoing are true and correct copies of the Record on Appeal as filed with the Clerk of the Appellate Division, Second Department; the Notice of Appeal to the Court of Appeals; the Order of Affirmance; the Judgment of Affirmance; the Order of the Appellate Division denying reargument and the Order of the said Court, granting leave to appeal; all of which are now on file with the Clerk of the County of Kings, Certification thereof hereby is waived.

278

Dated, New York, May 29th, 1929.

PAUL C. MATTHEWS,
Attorney for the Plaintiff-Appellant.

ALMY, VAN GORDON & EVANS,
Attorneys for the Defendant-Respondent.

279

Order of the Supreme Court, Kings County, Making the Order of the Court of Appeals Its Own Order.

283

At a Special Term, Part II of the Supreme Court, held in and for the County of Kings, at the Courthouse thereof, in the Borough of Brooklyn, City of New York, on the 4th day of November, 1929.

Present—HON. JAMES A. DUNNE, *Justice.*

284

ANNA URAVIC, Administratrix of the Goods, Chattels and Credits of Anton Uravic, Deceased,

Plaintiff,

—against—

F. JARKA COMPANY, INC.,

Defendant.

The plaintiff in the above entitled action having appealed to the Court of Appeals of the State of New York from a judgment entered in the Office of the Clerk of the County of Kings, on the 7th 285
day of March, 1929, upon the order of the Appellate Division, Second Department, entered in the office of the Clerk of said Appellate Division, on the 15th day of February, 1929, affirming the judgment with costs, heretofore entered in the office of the Clerk of the County of Kings on the 7th day of April, 1927, and upon the order of said Appellate Division, dated and entered April 8, 1929, granting leave to the plaintiff to appeal to the Court of Appeals of the State of New York,

286 and said appeal having been duly heard in the Court of Appeals and after due deliberation the said Court of Appeals having ordered and adjudged that said judgment so appealed from be affirmed with costs, and the said Court of Appeals having further ordered that the record of proceedings in said Court of Appeals be remitted to the Supreme Court there to be proceeded upon according to law.

Now, on reading and filing the remittitur from the Court of Appeals of the State of New York, and upon motion of Almy, Van Gordon & Evans,
287 attorneys for the defendant, F. Jarka Company, Inc., it is

ORDERED, that the said order of the Court of Appeals be and the same hereby is made the order of this Court.

Enter,

JAMES A. DUNNE,
J. S. C.

Granted—Nov. 6, 1929.

288 FRED. G. LEMMERMANN,
Clerk.

Judgment of Supreme Court, Kings County, Entered Upon the Order and Judgment of Affirmance by the Court of Appeals.

289

SUPREME COURT,

KINGS COUNTY.

ANNA URAVIC, Administratrix of the Goods, Chattels and Credits of Anton Uravic, Deceased,

Plaintiff,

—against—

F. JARKA COMPANY, INC.,

Deefndant.

290

Plaintiff in the above entitled action having appealed to the Court of Appeals of the State of New York, from judgment dismissing plaintiff's complaint, entered in the office of the Clerk of the County of Kings, on the 7th day of March, 1929, upon the order of the Appellate Division of the Supreme Court, Second Department, dated February 15th, 1929, and affirming the judgment heretofore entered in the office of the Clerk of the County of Kings, on the 7th day of April, 291
1927, and the Court of Appeals having heard such appeal and having ordered and adjudged that the judgment of the Appellate Division, Second Department, be affirmed with costs, and having further ordered that the record of the proceedings of said Court be remitted to the Supreme Court there to be proceeded upon according to law, and the remittitur from the Court of Appeals having been filed in the office of the Clerk of the County

292 of Kings, and an order having been entered thereon, making the order of the Court of Appeals the order of this Court and affirming with costs the order and judgment of the Appellate Division appealed and the judgment entered thereon in the office of the Clerk of the County of Kings, on the 7th day of March, 1929, and directing the Clerk of this Court to enter such judgment for costs and the defendant's costs having been duly taxed at the sum of $97.69,

Now, on motion of Almy, Van Gordon & Evans, attorneys for the defendant, F. Jarka Co., Inc., it is ordered the judgment of the Appellate
293 Division of the Supreme Court, Second Department, be and the same is hereby affirmed, further adjudged that the defendant, F. Jarka Company, Inc., do recover of the plaintiff, Anna Uravic, as administratrix of the goods, chattels and credits of Anton Uravic, deceased, in the sum of $97.69 costs as taxed and that the said defendant have execution therefor.

Dated, New York, November 18th, 1929.

FRED. G. LEMMERMANN,
Clerk.

294 (Seal)

Order and Judgment of Affirmance by the Court of Appeals.

295

COURT OF APPEALS.

State of New York—ss.:

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 22nd day of October, in the year of our Lord one thousand nine hundred and twenty-nine, before the Judges of said Court.

296

WITNESS:

THE HON. BENJAMIN N. CARDOZO, Chief Judge, presiding.

WM. J. ARMSTRONG, Clerk.

Remittitur—October 23, 1929.

ANNA URAVIC, as Admrx., etc.,

Appellant,

—against—

F. JARKA COMPANY, INC., Impld., etc., 297

Respondent.

Be it remembered, that on the 3rd day of June in the year of our Lord one thousand nine hundred and twenty-nine, Anna Uravic, as administratrix, etc., the appellant in this cause, came here unto the Court of Appeals, by Paul C. Matthews, her attorney, and filed in the said Court a notice of appeal and return thereto from the judgment of

Order and Judgment of Affirmance by the Court of Appeals.

298

the Appellate Division of the Supreme Court in and for the Second Judicial Department. And F. Jarka Company, Inc., the respondent in said cause, afterwards appeared in said Court of Appeals by Almy, Van Gordon & Evans, its attorneys.

Which said notice of appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon, the said Court of Appeals, this cause having been submitted by counsel for the respective parties, and after due deliberation had thereon, did order and adjudge that the judgment

299

of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed, with costs, on the authority of Resigno v. F. Jarka Co., Inc., 246 N. Y. 537.

And it was also further ordered that the record aforesaid, and the proceedings in this Court, be remitted to the said Supreme Court, there to be proceeded upon according to law.

Therefore, it is considered that the said judgment be affirmed, with costs, etc., etc., as aforesaid.

And hereupon, as well the notice of appeal and return thereto aforesaid as the judgment of the

300

Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court before the Justices thereof, etc.

WM. J. ARMSTRONG,
Clerk of the Court of Appeals
of the State of New York.

Certificate of County Clerk.

Court of Appeals, Clerk's Office, 301
Albany, October 23, 1929.
Albany.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

WM. J. ARMSTRONG,
Clerk.

(SEAL)

302

Certificate of County Clerk.

State of New York,
County of Kings—ss.:

I, FRED G. LEMMERMANN, Clerk of the Supreme Court in and for said County, and Clerk of the Supreme Court of said State, do hereby certify that the foregoing consists of certified copies of the order and judgment on the remittitur, which are on file in my office.

IN WITNESS WHEREOF, I have hereunto set my 303
hand and affixed my official seal, this day of December, A. D. 1929.

FRED G. LEMMERMANN,
Clerk.

(SEAL)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 3, 1930

The petition herein for a writ of certiorari to the Supreme Court of the State of New York is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.